IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

WP(C).No. 31459 of 2006(T)

PETITIONER:

T.H.HUSSAIN JAMAL,
SENIOR GRADE TYPIST,
OFFICE OF THE ASSISTANT DIRECTOR OF SURVEY RANGE,
PATHANAMTHITTA.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO

RESPONDENTS:
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1. **ADDITIONAL COMMISSIONER OF LAND REVENUE,**
   COMMISSIONERATE OF LAND REVENUE,
   THIRUVANANTHAPURAM.

2. **DISTRICT COLLECTOR,**
   PATHANAMTHITTA.

3. **SPECIAL TAHSILDAR (L.R.),**
   PATHANAMTHITTA.

BY GOVT.PLEADER SRI. P. NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER NO.833/90/A1 DTD. 21/02/1991 OF THE SPECIAL TAHSILDAR (LR), PATHANAMTHITTA.

EXT.P2: COPY OF THE ORDER NO.218/91/A1 DTD. 24/09/1991 OF THE SPECIAL TAHSILDAR (LR), PATHANAMTHITTA.

EXT.P3: COPY OF THE REPRESENTATION DTD. 13/03/2006 SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR, PATHANAMTHITTA.

EXT.P4: COPY OF THE JUDGMENT IN WP(C) NO.16676/04-I DTD. 09/06/2004 OF THIS HON'BLE COURT.

EXT.P5: COPY OF THE LETTER NO.LR(N) 2-38465/06 DTD. 29/09/2006 OF THE ADDITIONAL COMMISSIONER OF LAND REVENUE ADDRESSED TO THE DISTRICT COLLECTOR, PATHANAMTHITTA.

EXT.P6: COPY OF THE LETTER NO.B1.782/06 DTD. 8/11/2006 OF THE ASSISTANT DIRECTOR, SURVEY RANGE OFFICE, PATHANAMTHITTA.

/TRUE COPY/

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K.K. DENESAN, J.

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W.P.(C) No. 31459 OF 2006 T
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Dated this the 8th February, 2007

J U D G M E N T

The petitioner is working as Senior Grade Typist in the Revenue Department. She commenced regular service as Lower Division Typist on 1-11-1988. She had provisional service in the same category with effect from 7-2-1984 to 8-5-1987. Increment was sanctioned to her taking into account the provisional service also vide Ext. P1 order dated 21-2-1991. The benefit thus granted was subsequently cancelled by Ext. P2 order dated 24-9-1991. Against the cancellation, the petitioner filed Ext. P3 representation enclosing Ext. P4 which is the copy of the judgment of this Court. The representation was, however, rejected by Ext. P5 order of the Land Revenue Commissioner. It has been communicated to the petitioner as per Ext. P6 order. Challenging Exts. P2, P5 and P6, this writ petition has been filed.

2. The only question for consideration is whether the reason stated in Ext. P5 is sustainable in law. In

view of the authoritative pronouncement of this Court that provisional service can be counted for the purpose of increment in the same category of post in cases where the employees have commenced their regular service before 1-10-1994, the impugned orders are liable to be interfered with. Since the petitioner commenced regular service from 1-11-1988, she is entitled to the benefit of Government Decision No. 2 below Rule 33 of Part I, K.S.R. The reason stated in Ext. P5 to the extent it runs contrary to the above principle of law laid down by this Court interpreting the above statutory provision, is not sustainable. Exts. P2, P5 and P6 are therefore set aside. The respondents are directed to restore the benefit granted to the petitioner as per Ext. P1 and grant all consequential benefits. The amount recovered or got refunded from the petitioner pursuant to Ext. P2 shall be paid back to him as early as possible, at any rate, within two months from the date of receipt of a copy of the judgment. The benefits consequent on restoration of Ext. P1 shall be worked out and paid to him within

three months from the date of receipt of a copy of the judgment.

The writ petition is disposed of as above.

K.K. DENESAN
JUDGE

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